

CITY OF MIAMI BEACH  
Office of the City Manager  
Letter to Commission No. 142-2005

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**To:** Mayor David Dermer and  
Members of the City Commission

**Date:** June 6, 2005

**From:** Jorge M. Gonzalez  
City Manager

**Subject: SPECIAL MAGISTRATE IMPASSE RECOMMENDATIONS**

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The purpose of this LTC is to transmit to you the Special Magistrate's Report on the impasse proceedings with the Communications Workers of America (CWA), which outlines his non-binding suggestions.

Under separate cover, we will be evaluating and reporting to you, the Administration's positions to resolve the impasse.

If you have any further questions, please call me.

Thank you.

Attachment: Special Magistrate's Recommendation

JMG\LG\mr

cc: Ramiro Inguanzo, Chief of Staff  
Linda Gonzalez, Labor Relations Director

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## **PUBLIC EMPLOYEES RELATIONS COMMISSION**

**In the Matter of Impasses between:**

**City of Miami Beach, Florida**

**and**

**Communication Workers of  
America  
Local 3178**

**Case # SM-2004-037**

**Representing the City:**

**James C. Crosland, Esq.  
Akerman Senterfitt  
One Southeast Third Ave. - 28<sup>th</sup> Fl.  
Miami, FL 33131**

**Representing the Union:**

**Robert A. Sugarman, Esq.  
Sugarman & Susskind  
2801 Ponce De Leon Blvd., Suite 750  
Coral Gables, FL 33134**

**Respectfully submitted by:**

**John C. McCollister, Ph.D.  
Special Magistrate**

## PUBLIC EMPLOYEES RELATIONS COMMISSION

In the matter of impasses between:	)	
	)	
The City of Miami Beach,	)	
Florida	)	
	)	Case # SM-2004-037
and	)	
	)	
Communication Workers of	)	
America, Local 3178	)	

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Pursuant to Section 447.403, Florida Statutes, and Administrative Code Rule 60CC-3.004, the undersigned was appointed as Special Magistrate to hear the issues as outlined in this report involving the City of Miami Beach, Florida (the City) and Local 3178 of the Communication Workers of America (the Union), and to make recommendations on the same.

Both parties were afforded full opportunity to present all evidence germane to the issues. With the exception of the second half of the seventh day of the Hearing (May 4, 2005) and the last full day of the Hearing (May 19, 2005), a Court Reporter was present; in addition, a television recording was made of the proceedings.

The first day of Hearing (Wednesday, March 16, 2005) began at 10:00 a.m. and concluded at 5:30 p.m.

The second day of Hearing (Thursday, March 17, 2005) began at 9:30 a.m. and concluded at 4:30 p.m.

The third day Hearing (Friday, March 18, 2005) began at 1:00 p.m. and concluded at 5:30 p.m.

Due to demands for submission of extra evidence, other sessions were needed. The two lead attorneys and the Special Magistrate held a 45-minute conference call on April 6, 2005, and addressed the issues to be discussed at other meetings.

The fourth day Hearing (Tuesday, April 12, 2005) began at 1:00 p.m. and ended at 7:30 p.m.

The fifth day Hearing (Monday, May 2, 2005) began at 10:30 a.m. and concluded at 5:55 p.m.

The sixth day Hearing (Tuesday, May 3, 2005) began at 9:30 a.m. and concluded at 6:20 p.m.

The seventh day Hearing (Wednesday, May 4, 2005) began at 9:30 a.m. Both parties broke into groups in an attempt to mediate the issues. The sessions concluded at 4:15 p.m. and were scheduled to continue on May 19<sup>th</sup>.

The eighth and final day of Hearing (Thursday, May 19, 2005) began at 9:30 a.m. and concluded at 3:10 p.m. Once, again, the sides broke for group meetings.

The Special Magistrate promised to render his opinion to the City Commission within 10 days following the last session.

Appearing for the City:

James C. Crosland, Esq., Attorney

Paul Ryder, Esq., Attorney

Linda Gonzalez, Director, Labor Relations

Michael Reyes, Labor Relations Specialist

Patricia Walker, Chief Financial Officer

Stephen Palmquist, Actuary

Richard Shell, Witness

Pat Hipple, Human Resources Administrator

Oscar Satiesteban, Data Base Administrator

Saul Frances, Parking Director

Julia Magrisso, Assistant Director, Parks & Recreation

Deedee Whitehorn, Chairman, Budget Advisory Committee

Brad Judd, Property Management Director

Eric Yuhr, Operations Assistant, Fire Department

Trish Walker, CFO, City of Miami Beach

George Gonzalez, City Manager

Appearing for the Union:

Robert A. Sugarman, Esq., Attorney

Pedro Herrera, Esq., Attorney

Richard McKinnon, President, Local 3178

Lawrence Jessup, Economics Consultant

Phyllis Shamis, Complaint Operator, Dept. of Police

Uwezo Ross, Dispatcher, Dept. of Police

Edward Delfavero, Assistant Fire Chief

Jerry Buechler, Health Care Consultant

Janice Pye, Code Compliance Administrator

Joseph McManus, Lifeguard

Warren Green, Pool Guard

Oscar Alfonso, Temporary Lifeguard

Jonathan Sinkes, Electrician

#### THE HEARING:

The Union opened by declaring that Miami Beach is an international city. Although its borders contain a bit more than 90,000 residents, the City hosts more than 11 million visitors each year.

Responsibility for maintaining Miami Beach as an attractive venue for tourists includes the collective work given by the CWA—the largest union in the City. The Union membership consists of approximately 450 skilled blue-collar and clerical workers.

During FY 1993 - 1994, the City was able to convince a Special Master that its financial situation was dire. Following the report of the Special Master, Union employees remained at a status quo in terms of wages. Today, however, the City enjoys "unrivaled financial success," according to Union Attorney Robert Sugarman. "There is more than enough money available," he said, "and we're asking no more than other unions."

The City Manager, just last September, reported that the City's credit rating has risen and that its debt has decreased. "The City is rolling in money," said Mr. Sugarman.

The City has five defined bargaining units:

1. The FOP – Police
2. The IAFF – Firefighters
3. CWA

## 4. AFSCME

## 5. Government Supervisors Association (GSA)

According to the Union, the City, other unions—especially those representing the police and firefighters—are treated better. CWA members, according to Attorney Sugarman, lag behind other unions and their members have become second-class citizens.

City Attorney James Crosland did not endorse the claim that CWA members are considered "second-class citizens." He did admit, however that the Union was correct when it states that the police and firefighters unions are treated differently. "We feel they are different entities," said Attorney Crosland.

The CWA and the City have not ratified a Collective Bargaining Agreement for FY '03 - '04. Consequently, the two sides also have not signed-off on an Agreement for FY '04 - '05 and for FY '05 - '06.

Several issues were presented to the Special Magistrate. In every instance, the party that seeks a movement or a change in the existing practice and/or article within the Collective Bargaining Agreement, bears the burden of proof. Both sides endorsed this understanding.

A total of 23 issues were initially discussed at the Hearing. During the first day of Hearings, one of them—Sick Time Sell-Back—was withdrawn by the Union.

During the third day of Hearing, Union Attorney Robert Sugarman suggested, in an effort to save time, an attempt at mediation regarding all of the issues, save pension and health insurance. The City firmly held its ground and did not accept the suggestion.

As the days of the Hearing progressed, however, the City altered its feeling and agreed to sit for an attempt at mediation.

Throughout the Hearing, the Special Magistrate had to concentrate on separating fact from opinion. While everyone is entitled to his or her opinion, nobody is entitled to his or her own set of facts. The Special Master wishes to go on record by stating that he appreciates the efforts by representatives of both sides who assisted in presenting the entire picture of things without embellishment and hyperbole.

As in any hearing of this nature, the Special Magistrate must consider three factors:

1. The Union;
2. City Management;
3. and, ultimately, the Citizens of Miami Beach.

The Special Magistrate had the duty to hear and evaluate testimony and evidence and, based on same, is commissioned to make recommendations in line with what he felt was best for the residents of Miami Beach.

The following sections of this report deal with the issues facing both parties, the stands taken by each side during the course of the Hearing, the opinion of the Special Magistrate and his recommendations to the City Commission.

## TERM OF AGREEMENT

The City says that unless both parties agree, the current Statutes allow a City Commission to consider only the first year of Impasse—i.e. FY '03 – '04. The City wishes to ratify a contract not only for FY '03 – '04, but also one for FY '04 – '05, FY '05 – '06, and FY '06 – '07.

The Union is unwilling to negotiate for FY '06 – '07. In the words of Union Attorney Robert Sugarman, "Who knows what circumstances might be present during the '06 – '07 timeframe?"

### Opinion:

The Special Magistrate applauds the City for its willingness to lock-up wages and other aspects of a Collective Bargaining Agreement for an extended time. At the same time, he agrees with the Union. Establishing a salary structure, etc., this far out would counter a caution expounded by the City throughout the Hearing that the economy of Miami Beach relies on the impact of the tourist industry and, at the same time, remains vulnerable to potential damage created by hurricanes and other weather-related activities.

### Recommendation:

Persuaded not only by the argument of the Union but also by the cautions presented during the Hearing by City representatives, the Special Magistrate asks the City Commission to consider only an Agreement for fiscal years '03 – '04, '04 – '05, and '05 – '06.

## WAGES

Since 1993, when the relatively poor fiscal status of the City opened the door for the CWA to make concessions, other unions have received decent wage increases. During FY '03 - '04, for example, FOP, IAFF, and AFSCME members received a 3%, increase. They got an additional 3% increase for FY '04 - '05, and 3 ½% increase for FY '05 - '06. The GSA received a 2 ½% increase for each year with a "re-opener" for FY '05 - '06.

The City has offered the CWA 1 ½% increase for FY '03 - '04 that would be a lump sum and not subject to pension payments. For FY '04 - '05, the City has offered a 2 ½% increase with no retroactive payments, a 2 ½% increase for FY '05 - '06 and, for FY '06 - '07, a 2 ½% increase or the CPI, but not to exceed 3%.

Lawrence Jessup, an economic consultant hired by the Union, presented a volume of data which was designed to show the dollar difference between the petitions of the Union as compared with the offers of the City. More than a few of Mr. Jessup's figures, however, were openly challenged by the City throughout the Hearing as being either "inaccurate" or "misleading." As an example, when Mr. Jessup attempted to distinguish between the Union and City wage package proposals, he presented only the difference in base pay; he did not include fringe benefits, even though he presented his figures as an attempt to "show the difference" in cost to the City.

The bulk of Mr. Jessup's presentation revealed little more than was already known by those in attendance, i.e. the City has enjoyed the sort of prosperity heretofore unequalled. Taxes have been lowered. Debt has been reduced. Credit rating has increased.

City Attorney James Crosland agreed with the Union in terms of Miami Beach's solid financial status. "As compared with other cities our size," he said, "we're at the top."

Union Attorney Sugarman opined that much of this success is due to the diligent and productive work of CWA members.

Chief Financial Officer for the City, Patricia Walker, also agreed with the Union that Miami Beach enjoys a positive cash flow. Nonetheless, she highlighted several additional mistakes in the report given by the Economic Consultant.

Ms. Walker also brought to the attention of the group that she was going to recommend to the City Commission an increase in the amount of money that would be set aside as a designated contingency fund (from its current \$11 million demand to approximately \$28 million). She also revealed that more money should be placed in the self-insurance fund. Whereas the current reserve for the self-insurance fund is approximately \$12.3 million, the actuary recommends that this be raised to about \$17.5 million.

Ms. Walker concluded her testimony by asking: "What is sustainable?" She was concerned that the Union member (or any other citizen) might conclude that the sharp rise in percentage of income this past year would be equaled each year hereafter. She warned that this escalating percentage of profit might be tempered in the event of any shift in the wind of tourist growth and/or development growth.

Ms. Walker, whose observations were echoed later by Ms. Deedee Whitehorn, Chairnan of the Budget Advisory Committee for the City, reminded all present that any economy (such as that of Miami Beach) based primarily upon tourism is vulnerable to

unforeseen disruptions such as hurricanes. "We now are advised to keep enough funds in reserve to take care of two full months of operation," she said.

In line with the issue of wages, the City initiated a "Pay for Performance" dimension to the Collective Bargaining Agreement. This issue is considered later in this report.

Opinion:

The Special Magistrate is convinced that the City does, indeed, enjoy the sort of positive cash balance that would be the envy of other municipalities. That claim by the Union evoked more challenges from the City than was necessary, partly due to the fact that the Union, through its Economic Consultant, insisted on introducing volumes of what it deemed to be official public records. By doing so, the Union opened several doors for the City to challenge and correct some specific figures. Someone might conclude that when a few figures in a document are proved to be in error or could be construed as "misleading," the credibility of that entire exhibit becomes more vulnerable to suspicion.

Part of the reason for the characterization by the City that Mr. Jessup's figures were "misleading"—in terms of the difference of opinion in the cost to the City were it to raise the percentage of pay for CWA employees in line with other unions—lay in the fact that when the Union refers to the amount of "pay" in its presentations, it considers only the amount of money its employees take home with them following each pay period. The City, on the other hand, correctly looks upon the word "pay" as not only the base wages, but the fringe benefits as well. The differences, says the City, can be substantial. The Special Magistrate agrees with the City.

Someone might well characterize Ms. Walker's assessment of the future as mere "doom and gloom"—i.e. citing the worst possible of scenarios. That could be, albeit one of the responsibilities of someone in Ms. Walker's position is to warn the City of what could happen in the event of a catastrophe. Ms. Walker commented on several occasions throughout the Hearing: "If all tourism dollars go away, we're in trouble."

Mr. Sugarman responded: "That could be said of all of Florida."

The Special Magistrate identifies much more with Mr. Sugarman's observation.

In spite of the new demands placed upon the City in terms of its reserve funds, along with the recommendations outlined by Ms. Walker, the Special Magistrate remains convinced that the City does not lack the funds to award CWA members a percentage raise equal to that of the FOP, IAFF and AFSCME.

The Special Magistrate does not feel comfortable with the insistence of the Union that it be on an equal surface in every respect with members of the police and firefighters unions.

In the mind of the Special Magistrate, of greater importance than a specific percentage of pay raises during the Impasses is the fact that the CWA wishes to be regarded on a par with police and firefighters. Attorney Sugarman, on more than one occasion, noted that the City was treating CWA employees as "second class citizens."

The Special Magistrate, does not salute the "second-class citizen" label; he is convinced that the City does not as well. He does agree with the City that CWA employees are not police officers or firefighters. Their jobs are quite different and, for all practical purposes, do not carry with them the inherent perils of law-enforcement and/or fire fighting. Because the roles of certain professions—in this case firefighters and police

officers—are different, there is nothing out of line with the City offering better salaries and/or better benefits to these groups as opposed to those who belong to the CWA.

As in most instances, decisions we make are based on emotion; we resort to logic in order to justify or explain our feelings. Such is the case here.

CWA workers wish to be shown the same amount of respect as are members of the FOP and IAFF. The Special Magistrate agrees. He is convinced that the City does respect CWA workers as individuals. At the same time, as any rational observer would agree, the City understands that the inherent danger of their jobs is far less than that of police and firefighters. Just as it is true that every job classification is not equal, so it is true that every amount of compensation cannot be equal and remain fair.

In terms of salary, the equalization of the amount of pay and fringe benefits between CWA and the FOP or IAFF will never be realized. The equalization in the percentage of raises, however, can be, and should be, a reasonable expectation.

One other factor that's involved here is the failure to hone a Collective Bargaining Agreement for FY '03 - '04. The facts presented at the Hearing convinced the Special Magistrate that both the City and the Union share the blame for canceling and for impeding scheduled bargaining sessions. The facts showed that the City proposed a date already booked by the Union and the Union failed to respond to pleas from the City to schedule discussions.

A consideration for the Special Magistrate was the City's behavior during the Impasse Hearing. The Special Magistrate was convinced that the City created some unnecessary barriers to progress when it made it more difficult than necessary for the Union to receive requested data. Only with the strong urging of the Special Magistrate

did the City respond in a reasonable time. Certainly, there is value in insisting that those outside City Hall follow a procedure and chain of command. At the same time, those outside City Hall are the ones for whom the administration work. When seeking information about public records, a citizen (including any member of the Union) must not be required to wait an extraordinary amount of time.

Throughout the Hearing, the City accused the Union of creating delays because, among other things, its representatives insisted on introducing new items of Impasse following negotiation sessions. This accusation received credibility during the Hearing when, even on the last day, the Union elected to introduce a new demand—to add washing machines at its lifeguard stations. While the request might have been valid, the fact that the Union added another request this late in the procedure says to the Special Magistrate that the City was correct in its observation.

Recommendation:

Since the City offered no acceptable rationale in denying CWA employees from sharing the same percentage of pay increases with other unions, the Special Magistrate asks the City to award CWA members the same percentage raises for FY '03 - '04, FY '04 - '05 and for FY '05 - '06 as granted to police and firefighters.

In terms of FY '03 - '04, the Union had been offered earlier the same 3% raise as given other employees. The Union elected to reject this offer. Were the Special Magistrate to recommend retroactivity at this point in time, he would send a message to this and other unions that in future negotiations, all it would have to do is reject a City's offer, knowing that it would get the same through a recommendation by the Special

Magistrate. Therefore, the Special Magistrate feels that the Union should receive the 3% raise but only as a lump-sum payment, not as a part of base pay.

For FY '04 - '05 the 3% base pay should be made retroactive to October 1, 2004.

For FY '05 - '06, the raise should be 3 ½ %.

## PENSION

Pensions have been in the news lately. Certain airline companies—Delta, USAir and United, for example—approach bankruptcy partly because of the amount of pension payments that must be borne by the companies. In some instances, the companies have either radically reduced their pension payments or have withdrawn them altogether.

The City expressed this same concern when addressing this issue during the Hearing.

The City admitted that the pension benefits for CWA differ with those of the police and firefighters. Both Attorney Crosland and Attorney Paul Ryder repeated the observation that the workers who belong to CWA, in the opinion of the City, are not the same kind of employees facing the same sort of challenges.

Union Attorney Sugarman put forth a spirited presentation in which he showed ample evidence that the City formerly had contributed the same basic amount toward the pensions of all employees. A marked difference in contributions and benefits separated CWA workers from the police and firefighters. In fact, since 1993, CWA employee contributions to the pension fund have increased, while the benefits have generally decreased. On the other side of the coin, police and firefighters have realized improved

benefits over the same period of time. During four of those years (1999 - 2003), the City made no contributions whatsoever to the employees' pension fund.

Attorney Sugarman said that in 1993, the City hit the Union twice; Union members contributed more and received fewer benefits, and the City ignored the requirement that permission for this action go to the voters. "The City continues to pay less for its employees each year, even though prosperity is at a record high," he said.

Mr. Sugarman repeated the Union's theme that it wants the same benefits as those enjoyed by the FOP and IAFF.

The City countered with the claim that, indeed, it did not contribute to the pension fund for four years. According to the City's Attorney Ryder, the pension fund was earning enough through its investments to more than make up the contributions in previous years.

As to bringing CWA employees up to the level of benefits enjoyed by the police and firefighters, the Union claimed that this would cost the City \$2,875,735 per year. The City claimed that this total was based upon year-old data. The City's claim is that the increase would be \$3,179,666 per year.

Within the arena of the pension fund is the fact that current CWA members are divided into two groups—Tier "A" and Tier "B." Benefits and percentages of contributions vary with the two tiers. In addition, the Union President, Mr. Richard McKinnen, has filed a lawsuit against the City regarding the spelled-out benefits.

Toward the end of negotiations, the Union suggested alternative solutions. Included in the suggestions were:

For Tier A—continue to pay 10% of their salary, including overtime, and receive the following benefits:

Drop,

100% Survivorship,

Two-year buy-back,

Early-out,

Allowed to remain in GERS when promoted outside of bargaining unit.

For Tier B—continue to pay 10% of their salary, including overtime, and receive the following benefits:

Drop,

100% survivorship,

Consolidating Tier B into current Tier A,

Allowed to remain in GERS when promoted outside of bargaining unit.

For 401-A employees who chose the window to enter the GERS will do so with the following improvements:

Drop,

Consolidating Tier B into current Tier A,

401-A Window

Allowed to remain in GERS when promoted outside of bargaining unit.

The City countered with several facts including that if a two-year buy-back were initiated, the City would still be obligated to pay 50% of the health insurance for the former employees.

The Union stated that, in most instances, those receiving two-year buy-backs get jobs elsewhere in which there is adequate health insurance coverage.

The City was unable to give to the Special Magistrate the number of those to whom they are giving the 50% health insurance coverage.

Opinion:

The Special Magistrate understands that the pension issue is one of the two "hot topics" in the negotiations. In this context, he has given the matter considerable thought.

He identifies with the frustration of the Union members who feel they have been compelled to make sacrifices since 1993 and have not been given relief.

The Special Magistrate was not convinced that the City is compelled to offer the complete benefits package to CWA members as it offers to police and firefighters. It's just another way of the City recognizing that those who are responsible for the safety of the citizens of Miami Beach are different kinds of employees.

At the same time, the Special Magistrate is of the opinion that in 1993, the Union did make sacrifices (due partially to the report of the Special Master at that time) in its pension benefits because the City was in dire financial straits. He believes that anyone who refuses to acknowledge the sacrifice of CWA members since 1993 is living on the wrong side of history.

This Special Magistrate therefore believes that the City, in its current state of solid footing financially, has a moral obligation to its employees who were willing to pay more and receive less for its pension program. By increasing some benefits at this time, the City is saying not only to current members of CWA, but also to all other employees: "We

appreciate the fact that you worked with us during the rough times; we are now willing to demonstrate this." Such a gesture should result in positive public relations.

Another dimension of the pension program, as pointed out by Attorney Sugarman, the portions of benefits given to those who are disabled or to the beneficiaries of those who have died should be the same. The Special Magistrate Agrees.

Recommendation:

In light of the above, again following many hours of consideration, the Special Magistrate recommends the following:

1. Adopt the Union's proposal for Tier A, for Tier B, and for 401-A groups.
  2. Overtime payments, however, should not be calculated toward pension payments.
  3. Duplicate for CWA members the same benefits as those currently given to firefighters and police personnel in the event an employee is disabled or dies while on the payroll.
  4. The Special Magistrate urges the Union to drop the current lawsuit.
- Note: while this involves not a specific issue of Impasse, the Special Magistrate feels that this will go far in promoting greater harmony between the Union and the City.

## HEALTH INSURANCE

This was the second of two "hot topics" under consideration. As of now, says the Union, CWA workers earn less money than police or firefighters, yet they pay more for health insurance coverage. As a result the CWA wants to form its own health insurance plan as have the police and firefighters.

The City says that if the CWA pulls out of the existing health insurance plan, Miami Beach would suffer adverse consequences to its budget. This would not be a good business decision. Right now, the CWA has the same plan as do members of AFSCME and GSA.

Of importance to the City is the fact that the current health plan has to include a slate of employees, 40 percent of whom are retirees. That figure is anticipated to increase over the next few years. According to the City, many (most) insurance carriers refuse to cover any municipality with more than 10 percent retired employees.

The City showed that premiums for this year's health insurance rose 4.4 percent. Attorney Ryder did admit that the City never sought bidders for the current contract. The Union objected to this approach and labeled it: "irresponsible management."

The Union said that it wants to pull out of the current plan and to form its own health plan. The Union claimed that it could fund its program were the City to pay the same PPO rates it gives AFSCME members; it could not do so were the City to pay only the HMO rates.

The City says that if the CWA workers pull out, it would drive up the costs to the City in order to cover other employees.

That notwithstanding, Attorney Sugarman kept pleading for the Union: "We want the same benefits as given to police and firefighters."

At the conclusion of the Hearing, the City repeated its stance that it would not accept a private plan for CWA members.

Opinion:

The Special Magistrate agrees with the Union that the City, indeed, should have sought bids on this year's insurance program. While he understands the City's justification for this decision (the previous year's second lowest bidder was much greater than that of the current company), he feels that an attempt should have been made to see if, indeed, some other company might have offered something better.

The Union, in the opinion of the Special Magistrate, presented a convincing argument that it could, indeed, form a self-insured plan while contributions by the City would not suffer. Perhaps, just perhaps, the absence of CWA employees from the plan might raise the contributions for the City to some degree, it is a relatively small sacrifice in order to keep and maintain good will among its employees. In fact, the input given to the Special Magistrate by other municipalities and industries in the private sector that managers are most willing to rid themselves of the burden of providing and managing health care for employees.

The Special Magistrate feels, however, the City should *not* be penalized by having to support such a plan by contributing substantially more to a self-insured plan than it would be obligated to pay had the Union remained with the current plan. In the opinion of the Special Magistrate, if the Union elects to become self-insured, it should not expect

the City to contribute more than it would had the Union agreed to remain with the current plan.

Also, the City should not be considered to become a "safety net" in the event a private health insurance plan should fail.

Recommendation:

The Special Magistrate urges the City Commission to allow members of the CWA to form its own health insurance plan. If their employees can enjoy the same or even better benefits at lower costs to them, so much the better.

The City should contribute to the health insurance program but to no more of a degree than it would had the Union stayed with the current plan. Also, in the unlikely event that the new self-insurance plan should fail or suffer unexpected losses, the City should not be held responsible to bail-out the new system. Therefore, the City's contribution to the new plan should not be more than that which is given to members of AFSCME.

## **ELECTION OF REMEDIES**

Currently, employees with a grievance can elect to go to arbitration or to the Personnel Board for relief. The City wants to change this so that the employee has the choice of electing arbitration or go before a hearing examiner who is hired by the City. The reason for the City's desire to adopt the new procedure is that the decisions rendered by a professional arbitrator or hearing examiner would be more in line with rules of law.

The City reminded those present that AFSCME has agreed to this procedure as have the police and firefighters unions. The GSA has grievance arbitration only.

The Union argued that the City is attempting to take away a tried and true method of grievance that has been in effect since 1937. "If it's not broke, don't fix it," repeated Attorney Sugarman. "The City's proposal will result in our grievances being heard by rookies, not seasoned veterans."

Right now, an employee may grieve his/her case before the Personnel Board and it costs him/her no money. Were he/she to go to arbitration, in all probability the employee would be burdened with the cost of hiring an attorney.

In addition, says the Union, if the City foots the entire bill, it could be seen as controlling the entire procedure. The existing Personnel Board has involvement by the local community.

Opinion:

Were the City allowed to hire its own hearing officer and/or arbitrator, the City, in all probability, would not control the situation. However, it can certainly give this appearance. The current system would eliminate that perception.

The Special Magistrate was also persuaded by the Union that a grievant can come before the Personnel Board without bearing the cost of legal counsel.

As a result of the above, the Special Magistrate sees no advantage to changing the existing procedure.

Recommendation:

The Special Magistrate urges the City Commission to maintain the status quo in this issue.

## UNION TIME BANK/CONVENTIONS

As of now, the Union has 17 stewards and 7 chief stewards that serve its members at, says the Union, approximately 40 work sites. The Union wants to alter the Collective Bargaining Agreement that would allow 3,000 hours per year for its stewards to conduct Union business with a rollover to the next FY for hours not used. The Union would accept a limit of 6,000 hours for a combined allotment plus rollover hours.

When pressed, the Union said that the stewards could engage not in just grievance discussions, but also in promoting the general welfare of the Union.

The City objected strongly to this addition. Attorney Crosland argued for the City that stewards could take off work for any reason and justify it by saying: "This is Union business."

As the Hearing progressed, the Special Magistrate learned that the previously stated "40 work sites" claimed by the Union did not involve 40 different buildings. The more accurate description would be 23 venues.

### Opinion:

The Special Magistrate agrees with the City. The Union, in his opinion, failed to demonstrate a genuine need to change the existing program for Union representatives. Were the demands by the Union endorsed, stewards on City time could spend time interfacing with their fellow members in lieu of serving as productive employees.

### Recommendation:

The Special Magistrate feels that the current policy of the Collective Bargaining Agreement should stand.

## CLEANING ALLOWANCE/UNIFORMS

These two issues are interrelated.

As to Cleaning Allowance, Ms. Phyllis Shamis, a Complaint Operator for the Police Department, and Ms. Uwezo Ross, a Dispatcher for the Police Department, testified that certain people who are required to wear City-issued uniforms are not compensated for costs of cleaning the uniforms. The cost for this is approximately \$20 per week.

The Union asks that everyone required to wear a City uniform receive a cleaning allowance of \$50 per month, and that all those Union members currently receiving such allowance have their compensation raised from \$40 to \$50 per month.

The City responded that it elected not to give the additional funds because the uniforms are washable and need not be dry-cleaned. Also, the workers are given uniforms, which saves on wear and tear of their personal wardrobes. Finally, said the City, it refuses to give all the extra pay demanded by the huge number of requests by the Union.

On this same issue, Mr. Edward Delfavero, Assistant Fire Chief, testified that, indeed, members of the IAFF do receive clothing allowance.

Union Attorney Robert Sugarman noted that the new uniforms not only contain logos for IZOD, but also they were not 100-percent cotton—something the employees enjoy wearing.

Finally, Attorney Sugarman requested that lifeguards receive a dress uniform akin to that worn by firefighters and police officers, that would be appropriate to wear during official funerals, etc.

Opinion:

The Special Magistrate was not convinced by the Union that a cleaning allowance is necessary for the sort of uniforms provided by the City. The employees, in his opinion, actually benefit from not having to wear their own clothing on the job. Were they compelled to wear their own clothing, they would have to cover the costs of washing them. That's just a normal expense nearly everyone bears in life.

Had the uniforms been the type that demanded to be dry cleaned for all practical purposes, the Union might have a stronger argument.

As to the fact that the Union members are required to wear uniforms with logos of a specific company, there's a compelling argument that they should be compensated for their role in advertising the product. Also, there is a sound argument that if someone refuses to wear the logo for personal reasons, he/she should not be compelled to do so.

The Union was also unable to convince the Special Magistrate that dress uniforms for lifeguards would benefit the City and/or the citizens of Miami Beach.

Recommendation:

The current practice for cleaning of uniforms should prevail. At the same time, if the City is being paid by IZOD to have its employees wear uniforms with the logo, the employees should share in 50-percent of this compensation. That money could be given to the Union's general fund.

The Special Magistrate asks the City Commission to reject the Union's petition for dress uniforms for lifeguards.

## PROMOTIONS

The Union was pointed in its remarks when it urged the Special Magistrate to urge the City to base promotions only on scores from written examinations and/or oral examinations that dealt with pragmatic matters relating to the job that demanded answers that could be measured in terms of accuracy. In short, the Union asked that "the merit be put back into the merit system."

Of special concern to the Union was the possibility of the administration promoting their favorite people in lieu of those who scored highest on the exams. Currently, the Collective Bargaining Agreement says that at least three of the top candidates would be considered for promotion. That phrase "at least," says the Union, invites other candidates to be put on the promotional list as opposed to the person receiving the highest score.

The City argued that factors other than written test scores enter into selecting people to be promoted. Personality traits and the ability to communicate with others are but two. Also, the City reminded all that the current system has served both the City and the Union for more than ten years. To quote Union Attorney Sugarman, who said many times during the course of the Hearing, "If it's not broke, don't fix it."

The Union countered with the fact that candidates for promotion can serve a probationary period and, if they do not measure-up to the responsibilities demanded by the new position, they can be sent back to their former positions. The City reminded the Special Magistrate that this process can be not only time consuming, but costly as well.

The Union introduced some witnesses and examples of those who claim they were not promoted as they should have been.

The City responded that far too often someone who was not selected for promotion will cry: "Foul!" Such is the case with the examples offered by the Union.

Finally, the City reminded those present that it has had a history of litigation over existing procedures in both the police and fire departments. Because of this, said Attorney Crosland, there is no more "rule of three."

Opinion:

In the mind of the Special Magistrate, the demand by the Union that only an objective test score (be it written or oral) form the sole criterion for promotion is understandable but unjustified. It is understandable in that, on paper, the most qualified should be placed into a specific position. But, is a test score the only standard by which we judge who would best serve the City in a particular position? The Special Magistrate thinks not. Frankly, that's not the way the real world acts.

Other factors must enter the picture when determining for the best candidate for promotion. Leadership, personality, and enthusiasm are but three qualities that cannot be measured through a multiple-choice or essay exam.

The higher up the ladder of responsibility a candidate climbs, the more important become these intangibles.

Considering only exam scores (the position of the Union) as a basis for promotion is also understandable when we consider that, in the past, some municipalities have promoted friends or relatives ahead of the more qualified. That fear notwithstanding, there was not one example offered by the Union that the City of Miami Beach has employed such a practice.

The Special Magistrate also recognizes that if, after tests have been taken, the City would select candidates who fall far down the list in scores, this can give an appearance of favoritism or nepotism.

The Special Magistrate can understand how using criteria other than test scores for promotion can generate other consequences. The recent report (March 23, 2005) of Desiree Goodwin, the librarian from Harvard University, who is suing the famed institution for its failure to promote her, is proof. The City, therefore, should be aware of this possibility when it considers other "measurements" in recommending promotions.

Recommendation:

In light of the above, the Special Magistrate urges the City Commission to frame a compromise policy. He asks the Commission to reject the Union's proposal of selecting candidates based solely on exam scores. But, in order to maintain the proper spirit of promotions and to give value to test scores, he asks that the City Commission establish a policy that only the candidates who score in the top three of promotional exams be considered for oral interviews for a vacant position. Such a policy would give proper weight to the qualifying exams, yet allow management the opportunity to consider the so-called intangibles often necessary for success in the new position.

## SICK/VACATION LEAVE ACCRUAL

Currently, the police and firefighters have an increased maximum number of days that they can accrue. The Union, which currently has the same plan as AFSCME and GSA, seeks the same benefit for its members as are enjoyed by the FPO and IAFF.

The Union introduced documents showing that the maximum for sick/vacation leave accrual increased for the Unclassified and some other Classified employees. The City countered with the fact that these benefits were the result of other bargaining sessions.

The City also reminded the Special Magistrate that the Union is attempting to pick the best from the contracts of all the other unions. The Union fails to mention that these benefits resulted from bargaining sessions in which there was give-and-take in order to generate an acceptable Collective Bargaining Agreement.

### Opinion:

The Special Magistrate agrees with the City on this issue. The benefits cited by the Union that are currently given to the FPO and IAFF have resulted from bargaining. We do not know what either of these unions have back in return. Therefore, to accept the Union's proposal based solely on this observation would be premature.

### Recommendation:

The Special Magistrate sees more value in maintaining the status quo in this instance.

## TEMPORARY EMPLOYEES

The City wants to expand the use of temporary employees. Currently the Collective Bargaining Agreement allows the City to have 30 temporary employees on its payroll at any given time; the City wishes to expand this number to 25% of the unit (approximately 107) employees.

Mr. Saul Frances, Parking Director for the City, states that currently his staff includes 37 officers and five supervisors. He would like to expand that number during peak times.

The Union protested the City's current use of temporary employees. Currently, says the Union, the City has brought on so-called temporary employees and have worked them 40 hours a week, 11 months of the year. "This is a way for the City to eliminate potential full-time employees," says Union Attorney Sugarman, "thus prohibiting our Union from gaining more members." The Union, in fact, wants to eliminate hiring of temporary employees altogether.

The City argues that the written letter of the Collective Bargaining Agreement does not prohibit this from happening. The City admitted that it saved money when hiring temporary employees, since it does not have to pay fringe benefits, including pensions or the cost of medical coverage.

The Union suggested that temporary employees be hired only from a list of those seeking full-time jobs. The City said this would not be possible. It pointed out that many of its temporary employees come from the ranks of schoolteachers and others who do not seek permanent positions, but only seasonal employment.

Opinion:

In the mind of the Special Magistrate, the City is technically correct when it states that they are following the letter of the law. At the same time, there is a huge difference between doing the right things and doing things the right way. The City has not only a legal consideration with this issue, it also has a moral obligation to its current employees.

In this instance, the City might be following the words of the Collective Bargaining Agreement. But, is the City's action in line with the intention of the Agreement? The Special Magistrate thinks not. In fact, the City's approach to this issue borders on the unethical.

It is tempting, certainly, for the City to cut back on expenses by hiring temporary employees who agree to work 40 hours a week in lieu of full-time workers. But, this does not reflect the spirit of the Agreement.

The term "temporary employee" says what it is—a momentary filling of a vacancy used as a stopgap measure in the event of peak seasons or unforeseen circumstances. An employee working 40 hours a week for a stretch of 11 months is *not* a "temporary employee."

The City noted that the testimony of the one witness supplied by the Union was a rare exception. Quite possibly. But, even this one exception should not be present.

The Special Magistrate urges the City immediately to use a more honest definition of this term.

This is not to say that the City should hire only from a list of potential full-time employees as suggested by the Union. Nonetheless, temporary employees should not become, in reality, full-time workers who do not share in benefits or Union membership.

**Recommendation:**

The Special Magistrate asks the City Commission to maintain its practice of hiring up to 30 temporary employees as the need arises. At the same time, it should adopt a policy whereby a temporary employee could work up to 40 hours per week over a given time—let's say a maximum of six months within a period of one year. The City, then, would have to decide whether or not to hire this person as a full-time employee.

In this way, a temporary employee would be just that—temporary. It could also serve as a probationary period in order to see if the employee could serve the City as a full-time worker.

## **RANDOM DRUG TESTING**

As the Hearing progressed, this issue became resolved through a mutual appreciation for the current times and combined responsibilities of the City and Union to ensure the public a drug-free environment whenever an employee handles weapons, drugs or patients.

Employees subject to random drug testing would be:

Communications Operators

Complaint Operator II

Crime Scene Technician I

Crime Scene Technician II

Dispatcher

Dispatcher Trainee

Lifeguard I

Lifeguard II

Lifeguard Lieutenant

Police Photographer

Pool Guard I

Pool Guard II

Property Evidence Technician I

Property Evidence Technician II

Public Safety Specialist

Opinion:

The Special Magistrate applauds representatives of both the City and the Union for their cooperative approach to this timely subject.

Recommendation:

The Special Magistrate asks the City Commission to adapt the application of random drug testing as endorsed by both the City and the Union for the jobs as outlined above.

## **ACCREDITATION AND CERTIFICATION PAY**

In terms of Accreditation Pay, as of now, police and firefighters receive an additional \$50 per pay period because they are members of an accredited department. The Union wants employees in the Parks and Recreation Department to get the same bonus because this group, too, has been accredited by the National Recreation and Parks Association.

The Union also notes that lifeguards and others who work in the two accredited departments do not receive this extra pay. The Union asks that they, too, receive the additional \$50 per pay period.

In addition, the Union seeks Certification Pay of \$50 per pay period for employees in the classifications of Code Compliance Officer II and Code Compliance Administrators who obtain and maintain the FACE Level III and Code Enforcement Professional certifications.

"If the City wants to have more professional employees," said Union Attorney Sugarman, "they would want to encourage employees to get higher ratings." Mr. Sugarman added that nobody likes to see a code compliance officer. These officers have the unenviable position of determining code violations and offering citations.

The City refuses to accept the Union's proposal; City Attorney James Crosland views this as only another attempt to get a wage increase. The City feels that accreditation for a particular department is given to the professionals within the unit, not to staff and clerical employees. The added accreditation pay, therefore, should not be given to the support staff.

The City says that if 20 employees fell into the category of receiving Certification Pay, this would result in an increase of \$1,000 per pay period or \$20,000 extra per year. Currently only five people would be eligible for the extra certification pay.

Opinion:

The Special Magistrate agrees with the Union in one respect and with the City in another.

Concerning extra pay for accreditation, the Special Magistrate sides with the City. In the real world of the accreditation process, the professionals are the ones who come under the microscope. These are the ones, therefore, who should receive the extra pay.

As to certification pay, the employee should receive the reward for his/her willingness to increase skills and, as a result, value to the City. The City would be better served with code compliance officers who receive better, more sophisticated training. Earning credits toward certification should allow the employee to become better at his/her job. Therefore, by rewarding the employee who gains extra education with certification pay would, in the mind of the Special Magistrate, prove to be a sound investment for the City.

The Union did not convince the Special Magistrate that employees in the Parks and Recreation Department should receive additional accreditation pay.

Recommendation:

For the reasons just cited, the Special Magistrate urges the City Commission to adopt the Union's proposal for certification pay and the City's stance on accreditation pay.

## **LIFEGUARD/POOL GUARD SCHEDULING**

Currently, lifeguards and pool guards work an eight-hour day, five days a week. The Union wishes to change these on-duty times to 10 hours a day, four days a week.

The City wishes to maintain the current practice.

The Union introduced Warren Green, a pool guard, who showed that guards working four 10-hour days would not only maintain the required safety of the pools, but, in all probability, save the City some money.

The Union also sought to have a similar schedule for its lifeguards. Union witnesses testified that by having the beach patrolled for 10 hours each day (as of now they are patrolled for eight hours during November, December and January), some drownings could have been avoided.

As to additional expense to the City, the Union claimed that its plan would cost the City an added \$36,588.34 per year.

The City, as it did earlier, challenged the Union's estimate of costs. The City claims, instead, that with the 10-hour schedule, an additional 12 lifeguards would have to be hired; this would cost much more than the figure cited by the Union.

Opinion:

Regarding the pool guards, the Special Magistrate was impressed with the detailed presentation of the Union. In spite of the City's testimony to the contrary, he is convinced that the Union's plan could save money without sacrificing the safety of the swimmers.

In terms of lifeguards, the Special Magistrate truly wrestled with this issue. Based on the challenged accuracy of previous figures presented at the Hearing by the Union's economic consultant, the Special Magistrate hesitated to accept at face value the Union's projected costs to substitute its plan for the current practice. At the same time, he is keenly aware that we cannot place a price tag on the value of a human life.

Would any of the victims of drowning been saved had a lifeguard patrolled the beach during the so-called "down" time? Nobody knows. But, the nagging question remains. In this instance, the Special Master would rather "sin on the side of grace."

Recommendation:

The rather confusing mixture of costs, plus effectiveness, plus potential life-saving situations causes this Special Magistrate to urge the City Commission to initiate the Union's plan for four 10-hour days for its pool guards and lifeguards for one full year. Afterward, let respected representatives from both the Union and City, plus at least one objective third party, honestly review the figures and determine if this should be a continuing practice or a temporary solution.

In the opinion of the Special Magistrate, this is the only way in which we'll discover how effective the Union plan can be.

## OSHA/ASBESTOS REMOVAL PROCEDURES

The Union presented several instances in which traces of asbestos were discovered within buildings on which employees were ordered to work. During construction or repairs of existing facilities, asbestos was found either in loose form or contained within wrappings. The Union felt that this type of working condition presents an endangerment to the health of employees assigned to these properties. It, therefore, asked that prior to any construction and/or repair work, the City survey each building. If asbestos is determined to be present, then either to rid the building of the substance or to

notify employees. In addition, the Union asked that the City educate employees as to how to recognize asbestos and how to deal with it if discovered.

The City responded by stating that at anytime it detected the presence of asbestos within a building, it ceased all activity until the threat was eliminated.

Opinion:

OSHA has already outlined for municipalities the responsibilities it has toward preventing employees from becoming endangered due to the presence of asbestos. To make such guidelines a part of the Collective Bargaining Agreement would add no further protection for employees and would only add to the volume of the Agreement.

The Special Magistrate feels that the matter is already addressed through federal law. It does not have to be made a part of the Agreement.

Recommendation:

That being said, so that Union members might feel more comfortable prior to taking on the duties of construction and/or repair on a building, the City should adopt a practice of inspecting each building prior to any work being assigned and, through a written note to the employees, assure any worker that the building has been inspected and that it is free of asbestos or, if there is asbestos present, to inform employees where it is located.

## **TUITION REIMBURSEMENT**

Section 8.24 of the Collective Bargaining Agreement says:

The City's tuition refund program shall be continued for the term of the Agreement.

The City wishes to change this to read:

The parties agree that the tuition assistance policy dated August 26, 2004, shall remain in effect for the duration of the Agreement.

The August 26 policy to which the City referred contains some specific limits on the amount of money that can be paid for specific courses. Part of the concern by the City lay in the fact that it recently lost an arbitration decision over some alleged unilateral rules changes without benefit of collective bargaining.

The Union countered with the observation that the August 26 policy limits not only the cost per course, but the number of courses that may be taken within a given semester by an employee. In order for a lifeguard or pool guard to obtain an EMT certificate, sometimes he/she is required to take more than one course at a time.

The Union also reminded those present that the current language in the Collective Bargaining Agreement is identical to that use in the FOP, IAFF and AFSCME agreements.

Opinion:

It is in the best interest of the City to encourage and foster advanced training for EMT and other certificates that will, in the long run, offer more protection to the citizens of Miami Beach. Any monies spent in these efforts will probably be the best investments by the City.

Recommendation:

The Special Magistrate asks that the City keep the current language that appears in the Collective Bargaining Agreement. However, each employee should be limited to

taking only one course per semester, unless a co-requisite course and/or lab must be taken in conjunction with the selected course.

## THREE AND ONE HALF OVERTIME PAY

Currently, if a Union employee is scheduled to work on a holiday, he/she receives an additional 1.5 times his/her pay. If, however, an employee is not scheduled to work on a holiday and is called into work, he/she receives an additional one-time his/her pay.

The City wishes to change this provision. If, says the City, an employee is called in to work during a holiday that he/she had planned to take off, that employee should receive only an additional 1.5 times his/her pay. In other words, an employee who was called in to work would receive the same rate of pay as would someone scheduled to work that holiday.

The Union protested. Attorney Sugarman pointed out that when an employee is called from his/her home on a holiday, that employee's plans to spend quality time with family and friends are compromised. That employee, he said, should be compensated for the added inconvenience.

### Opinion:

This issue impacts very few employees, nevertheless, the Special Magistrate agrees with the Union. In fact, he sees no justification whatsoever for the City to propose such a change. Calling an employee from his/her home to work on a holiday imposes an imposition on that worker. Additional compensation is only appropriate.

Recommendation:

The Special Magistrate urges the City Commission to maintain the current practice in terms of this issue.

## REPORTING PAY

Currently, Section 7.8 of the Collective Bargaining Agreement reads:

An employee who reports to work as scheduled will be guaranteed eight (8) hours of work or eight (8) hours of pay; (or, for those on ten-hour days, ten hours of work or ten of pay); provided, however, that supervisors may assign employees to perform any reasonable work.

The City urged its elimination from the Agreement because, in the words of Labor Relations Director Linda Gonzalez, "This never happens." Others for the City argued that this Section is obsolete and just adds unnecessary words to the Contract.

The Union testified that this is a safeguard that prevents the City from dismissing someone who has shown up for work on a particular day without the obligation to pay the employee for his time and effort in reporting as scheduled.

Opinion:

The Special Magistrate understands why the City considers this provision of the Agreement as being "obsolete" in light of history. At the same time, he can see the concern expressed by Mr. Sugarman for the Union. In the opinion of the Special Magistrate, the second concern far outweighs the benefit suggested by the City.

Recommendation:

The Special Magistrate asks the City Commission to retain Section 7.8 in the Agreement as it currently appears.

## PAY FOR PERFORMANCE

The City introduced a method by which good, productive workers could earn more than those who merely do just enough to get by. "It's a way to reward employees based upon performance," said Attorney Crosland. In short, each Union employee would be subject to an evaluation process. Scores on these evaluations would then determine an employee's wage increase (if any) for the following fiscal year.

The City introduced records of some scores of evaluations that were used to determine raises for employees of other unions. These scores appeared to be much higher than the average for those whose raises were not dependent upon ratings.

The Union believed that the current system of step increases has worked and should remain. The Union also stated that in the current mode of operation, if an employee does not score 50% on his/her evaluation, that employee does not receive a step increase in pay.

Opinion:

The City seemed to imply that scores on the evaluations for those whose raises are determined by the results are higher because the employees worked harder. That may be the reason, but the Special Magistrate suspects there is much more to the story.

In the event an interviewer is rating an employee and that interviewer realizes that a higher score would result in larger salary increases, that interviewer would be tempted

to give higher ratings. To compare the scores given by two sets of interviewers—one group who knows that the ratings will affect salaries and another group who knows the ratings will have little, if any, effect on salaries—violates the fundamental rules of sound statistical analysis. In a nutshell, it's comparing apples with oranges.

The Special Master, therefore, was not persuaded that the City's plan for "pay for performance" will produce any genuine benefit to the employees or to the City.

Recommendation:

The Special Magistrate encourages the City Commission to maintain the status quo in this instance.

## CONTRACTING OUT

In an effort to expedite construction or other work unable to be performed by Union members, the City wishes to contract out assignments and, in the event any Union employee is laid off, the City will only have to ask the new contractor to give the Union member first consideration for any available work. This differs from the current Agreement that states that a Union member is to be the first consideration to be hired by the contractor.

The Union strongly opposed this. "It's just another plan to cut back on the Union," said Attorney Sugarman.

Opinion:

The Special Magistrate may not go as far as Attorney Sugarman and suggest that this is a carefully conceived plan by the City to undermine the Union. At the same time, the current procedure in which jobs of Union members remain protected in the event of

contracting out seems to work well. There was no justification presented by the City to alter the existing procedure.

Recommendation:

The Special Magistrates recommends no change in the current Agreement as to this issue.

## EMT LIFEGUARD PAY

As of now, lifeguards (who are in the Ocean Rescue Division and report to the Fire Chief) with EMT certification, receive 5% extra pay. On the other hand, firefighters with EMT certification receive 1 ½% extra pay just because they have EMT Certification. Those who are assigned full-time to the Fire Rescue Division and have been on the force for at least one year, receive an additional 5% pay the first year and 9% extra for each year thereafter. The Union wants the same Certification Pay to be paid to lifeguards with EMT certification.

The City countered with the observation that there are no firefighters receiving an extra 5% or 9%. Were the City to adopt the Union's proposal, it would cost the City an extra \$67,000 per year.

Opinion:

In reality, no firefighter receives the 9% extra pay—a fact supported by Union representatives. As a result, the Special Magistrate can see no justification in altering the existing policy.

Recommendation:

The Special Magistrates urges the City Commission to make no change in the current practice.

## CONCLUSION

Since 2003, the City and the Union have been relegated to the purgatory of working without a Collective Bargaining Agreement. Such an atmosphere generates uneasiness, suspicion, rumors and a spirit of confrontation rather than compromise.

Both sides, in the opinion of the Special Magistrate, exhibited a willingness to settle and, at the same time, remained content to dig-in their heels regarding some specific issues.

Both sides dedicated long hours to these discussions. The Special Magistrate marvels at their willingness to curb tempers and maintain an atmosphere of professionalism.

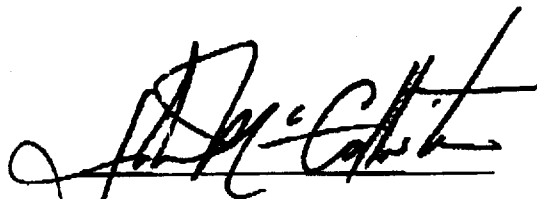
In the heat of discussion, representatives from both sides are often tempted to resort to *ad hominem* remarks, to pettifogging, and to obfuscation. The Special Magistrates wishes to go on record of congratulating both parties—especially Attorney Crosland and Attorney Sugarman—in their efforts to keep all of these to a minimum.

Throughout the years of deliberations, feelings have been hurt. Accusations have been made. The Special Master realizes that the lack of trust is the slowest wound to heal. However, he urges both sides to put the past behind them and to move forward to ensure an even brighter future for the City of Miami Beach. The City, in his opinion, has

a sound financial footing, a dedicated City Commission, a charismatic, progressive City Manager and an abundance of talent among its workforce.

The Special Magistrate has enjoyed his experiences with both sides in this effort. While is disappointed that an agreement could not be reached at the bargaining table, he does petition the City Commission to consider his recommendations and hopes that they will assist in the formulation of an acceptable Collective Bargaining Agreement.

May 28, 2005  
Port Orange, Florida



John C. McCollister, Ph.D.  
Special Magistrate